IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.676 of 2007

The Commissioner of Income-tax,
Tiruchirapalli. ..Appellant/Respondent

Vs

Lakshmi Vilas Bank Ltd.,
Salem Road, Kathaparai,
Karur. ..Respondent/Appellant

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.807/Mds/98 dated 17.08.2005 for the assessment year 1994-95.against the order of the Commissioner of the Income Tax (Appeal) XIII, Chennai 34 dated 25.02.1998 in ITA NO. 59/97-98 for the Assessment year 1994-95 against the order of the Deputy Commissioner of Income Tax Appeal Range Trichy at PAN/GIR NO. CQ0362 dated 31.12.1996.

For Appellant : Mr.N.Muralikumaran,
Sr. Standing Counsel for
Income-tax Department

JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'D', Chennai in I.T.A. No.807/Mds/98 dated 17.08.2005, raising the following substantial questions of law:-

"1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that penalty under section 27(1)(c) is not leviable on the assessee on the ground that the assessee did not have Mens rrea to conceal

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income and to avoid tax?

2. Whether in the facts and circumstances of the case, the Tribunal was right in following the decision of the Supreme Court in the case of Shri Shadilal Sugars Ltd., reported in 168 ITR 705?

3. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the penalty even though the assessee had filed inaccurate particulars and had failed to submit the accounts in respect of the issue pertaining to provision for bad debt under section 36(1)(viia)?"

2. The facts leading to the above substantial questions of law are as under:

The assessee is carrying on business of banking. The relevant assessment year is 1994-95 and the corresponding accounting year ended on 31.03.1994. The assessee filed Return of income admitting a total income of Rs.8,46,04,647/- on 28.11.1994. The same was processed under Section 143(1)(a) of the Income-tax Act ("Act" in short) determining the total income at Rs.9,82,96,869/-. Later, notice under Section 143(2) was issued to the assessee. The assessment was completed under Section 143 (3) determining the total income at Rs.13,01,03,800/-. While completing the assessment, the Assessing Officer found that the assessee had made excess claim amounting to Rs.25,62,640/- which was disallowed while computing the deduction under Section 36(1) (viia) of the Act. Later, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act. Show Cause Notice was also issued under Section 274 and the assessee sent reply dated 07.03.1997 to the said Show Cause Notice stating that there was a mistake which occurred due to clerical errors. The Assessing Officer levied a penalty of Rs.13,26,551/- under Section 271(1)(c) of the Act which worked out to 100% of the tax sought to be avoided. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) dismissed the appeal and confirmed the order of levy of penalty under Section 271(1)(c) of the Act. Aggrieved, the assessee filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal allowed the appeal and set aside the orders of the lower authorities. Hence the present appeal by the Revenue.

3. Learned Senior Standing Counsel appearing for the Revenue submitted that the assessee had deliberately claimed excess deduction. It is also submitted that there is a mistake committed by the assessee and the said mistake had been within the knowledge of the assessee. When this aspect was brought to the notice of the assessee while computing the assessment, the assessee had readily agreed that the mistake committed by him was due to misplacement of the decimal. There is a clear finding by

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the Assessing Officer that there is concealment of income and hence the Assessing Officer is right in levying penalty under Section 271(1)(c) of the Act. It is also submitted that if the verification of the Assessing Officer has not been done, the same could have been gone unnoticed and the assessee could have gained the advantage of tax benefit on the enhanced claim.

4. Heard the counsel. The assessee had claimed deduction of Rs.1,44,12,865/- as deduction under Section 36(1)(viia). For this purpose, the provision for Rural branch advance has been deducted at Rs.94,55,818/-. This sum of Rs.94,55,818/- has been arrived at deducting 4% on the gross advance of Rs.23,63,95,437/-. The assessee also furnished break up for the sum of Rs.23,63,95,437/- relating to 41 branches. Out of this, the amount attributable to Thottiam Branch amounts to Rs.7,11,83,542/-. Thottiam is only a small but a fertile area and for a place of that nature, the claim of advance of Rs.7,11,83,542/- appeared to be a little bit on the higher side. Hence the assessee was requested to furnish the basis of working for this advance, relating to this branch. The assessee also furnished the details. The basis of working is given as under:-

Date	Total Advances Rs.
April 30, 1993	76,27,784/-
May 31, 1993	72,60,205/-
June 30, 1993	70,67,858/-
July 31, 1993	68,71,584/-
August 31, 1993	67,86,791/-
September 30, 1993	70,57,524/-
October 31, 1993	70,25,124/-
November 30, 1993	70,23,623/-
December 31, 1993	71,46,057/-
January 31, 1994	71,25,659/-
February 28, 1994	72,68,455/-
March 31, 1994	71,59,587/-
Total	8,54,20,251/-
Average	7,11,83,542/-

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The assessee's total advance for the 12 months was only Rs.8,54,20,251/- and for none of the months the average has exceeded even Rs.80 lakhs. The correct average was worked out and it was found to be only Rs.71,18,354/-. When the mistake was brought to the notice of the assessee, the assessee agreed that there is a mistake and the same has crept in on account of misplacement of the decimals. The correct amount of rural advance will be Rs.17,23,30,249/- and the 4% provision on the same will work out to Rs.68,93,208/- as against the claim of Rs.94,55,818/-. The difference in excess claim amounts to Rs.25,62,640/- and the

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excess claim was disallowed. The said mistake is due to clerical error, which was unnoticed. The said mistake had not occurred in the earlier years. Also an explanation was offered by the authorities that it was an inadvertant mistake and the assessee had not concealed particulars of income or furnished inaccurate particulars. The Tribunal found that the mistake was due to misplacement of decimals and that there was no malafide intention in making the same. Also, it is seen that the Tribunal had given a categorical finding that the said misplacement of decimals could not tantamount to concealment of particulars or furnishing inaccurate particulars. Levying of penalty is quasi-criminal in nature. The burden always lies upon the Department to establish that the assessee had concealed his income. In the case of Dilip N.Shroff Vs. Joint Commissioner of Income-tax and Another (291 ITR 519), the Apex Court considered the scope of levying of penalty under Section 271(1)(c) of the Act, wherein it was held as follows:-

> "The legal history of section 271(1)(c) of the Act traced from the 1922 Act prima facie shows that the Explanations were applicable to both the parts. However, each case must be considered on its own facts. The role of the Explanation having regard to the principle of statutory interpretation must be borne in mind before interpreting the aforementioned provisions. Clause (c) of sub-section (1) of section 271 categorically states that the penalty would be leviable if the assessee conceals the particulars of his income or furnishes inaccurate particulars thereof. By reason of such concealment or furnishing of inaccurate particulars alone, the assessee does not ipso facto become liable for penalty. Imposition of penalty is not automatic. Levy of penalty is not only discretionary in nature but such discretion is required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind. Some of those factors apart from being inherent in the nature of penalty proceedings as has been noticed in some of the decisions of this court, inheres on the face of the statutory provisions. Penalty proceedings are not to be initiated, as has been noticed by the Wanchoo Committee, only to harass the assessee. The approach of the Assessing Officer in this behalf must be fair and objective."

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"....The term "inaccurate particulars" is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the Explanations are taken recourse to, a finding has to be arrived at having regard to clause (A) of Explanation 1 that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one, was false. He must be found to have failed to prove that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not bona fide, it should have been found as of fact that he has not disclosed all the facts which was material to the computation of his income."

"...."Concealment of income" and "furnishing of inaccurate particulars" are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi. Although it may not be very accurate or apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars."

In the present case, the Tribunal applied the principles enunciated in the Supreme Court judgment cited supra, and accepted the explanation offered by the assessee. It was found that the misplacement of a decimal cannot tantamount to concealment of particulars or furnishing inaccurate particulars and the computation was only due to misplacement of a decimal. On facts, the Tribunal correctly deleted the penalty levied under Section 271(1)(c) of the Act. The reasons given by the Tribunal are based on valid materials and evidence and we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference.

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5. Under these circumstances, no substantial questions of law arise for consideration of this Court and accordingly the tax case is dismissed. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench 'D', Chennai.
   Besant Nagar, Chennai 90

2. The Commissioner of Income tax, Tiruchirapalli

3. The Commissioner of Income-tax (Appeals)-XIII,
11, Mahatma Gandhi Road, Chennai 34

4. The Deputy Commissioner of Income-tax,
   Special Range, Tiruchy.

+ one cc to Mr. N. Muralikumaran, SSC FOR IT sr no. 35729

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nm(29.06.07)

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